

Title 17 – Tax

Chapter 2 – Utility Business Activity Tax

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17-02.150	Repealer
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Legislative History

Enacted:

Regulating Taxation, Ord. 185 (9/30/03), BIA (10/8/03).

Repealed or Superseded:

Technical Corrections to Ord. 126, Ord. 128 (11/10/98), BIA (11/25/98).

Utility Business Activity Tax, Ord. 126 (8/6/98), BIA (8/20/98).

Cable Television Business and Occupation Tax, Ord. 85-11-53 & App. A (11/15/85), BIA (12/16/85) (reenacting Ord. 50 (9/7/82)).

Rescinded:

Utility Business Activity Tax, Ord. 122 (2/4/97), BIA (not approved).

Cable Television Business and Occupation Tax, Ord. 48 (3/9/82), BIA (3/30/82, rescinded 6/10/82).

17-02.010 Title.

This Chapter shall be referred to as the "Utility Business Activity Tax Code."

[History] Ord. 185 (9/30/03).

17-02.020 Authority.

This Chapter is enacted pursuant to the inherent sovereign powers of the Swinomish Indian Tribal Community and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the United States.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.030 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be as set forth in this Section:

- (A) **"Buyer"** means, without limiting the scope hereof, every person who receives goods or services from a seller in exchange for a promise to deliver to the seller, or for the actual delivery to the seller, of money or other goods or services of value to the seller.
- (B) **"Cash Discount"** means a deduction from the invoice price of goods or charge for services that is allowed if the bill is paid on or before a specified date.
- (C) **"Doing business within the Swinomish Reservation,"** as applied to a utility, means whenever the utility makes a retail sale within the Swinomish Reservation.
- (D) **"Gross Receipts"** means the full selling price billed by a utility for the retail sale of utility services.
- (E) **"Person"** means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club company, joint stock company, business trust, tribal, state, or other local government or any agency thereof, private or municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise.
- (F) **"Reservation"** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (G) **"Retail Sale"** means every sale of utility services except wholesale sales.
- (H) A **"retail sale within the Swinomish Reservation"** means a retail sale that takes place

within the exterior boundaries of the Swinomish Reservation or is to or for the benefit of a buyer or service address physically located within the exterior boundaries of the Swinomish Reservation, regardless of the mailing address at which the buyer receives a bill for such retail sale.

- (I) **"Sale"** means any provision of services or the transfer of ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a **"retail sale."** It includes renting or leasing, conditional sales contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.
- (J) **"Seller"** means every person making a retail sale to a buyer.
- (K) **"Selling Price"** means the consideration, whether money, credits, rights, or other property, expressed in the terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued by the seller and without any deduction on account of losses; but shall not include itemized taxes paid by the buyer and the amount of cash discount actually taken by a buyer.
- (L) **"Tribe"** means the Swinomish Indian Tribal Community, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, whose governing body is the Swinomish Indian Senate.
- (M) **"Utility"** means any person operating, for hire or sale, a plant, equipment, or system for the provision of utility services.
- (N) **"Utility services"** means:
 - (1) the distribution of water;
 - (2) the collection or processing of sewerage system products;
 - (3) the pick-up, transfer, storage, treatment, or disposal of waste;
 - (4) the transmission of telephone, telegraph, or any other electronic signals used for communication;
 - (5) the distribution of television signals via a community television antenna or cable system; and
 - (6) the distribution of electricity, natural, artificial, or mixed gas, propane, liquefied

petroleum gas, heating oil, or other energy sources; but the term shall not include the provision or distribution of firewood; nor shall it include the provision or distribution of gasoline or diesel fuels clearly intended for use by the final consumer in motor vehicles or boats.

(O) **"Waste"** means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include material collected primarily for recycling or salvage.

(P) **"Wholesale sale"** means a sale of utility services to a utility for resale by that utility.

[History] Ord. 185 (9/30/03); Ord. 128 (11/10/98); Ord. 126 (8/6/98).

17-02.040 Benefits of Tribal Government.

Among the benefits provided by the tribal government to tribal members and to non-members residing or conducting business upon the Reservation are the following: the provision of governmental services, including public sewage collection systems, water systems to provide safe drinking water and fire protection, tribal roads, solid waste collection, and social services and education programs; the maintenance of public health, safety, and law and order, including tribal police, fisheries enforcement, hazardous emergency response, environmental protection, comprehensive land use planning and regulation, and the provision of a Tribal Court system with general jurisdiction for the resolution of civil disputes and limited jurisdiction for the prosecution of criminal actions; the protection of Reservation lands and resources; the provision of public recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, parks, and tribally owned tidelands; the support of cultural and religious events and activities; the promotion and regulation of Reservation businesses and economic development; and the provision of employment to both members and non-members of the Tribe.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.050 Need for Tribal Governmental Revenue.

- (A) The Tribe has been able to obtain numerous federal and state grants, low interest loans, and other programs that have, in part, financed the provision of public services and benefits to the Reservation community. The full cost of these needed and beneficial programs and services are not covered by the programs, themselves, however, and it is necessary for the Tribe to raise supplemental revenues locally to continue to provide these essential public services. The Senate finds that the entire Reservation community, both Indian and non-Indian, whether residing, employed, or otherwise doing business on the Reservation, benefits from these tribal governmental services and programs directly and because the tribal services and programs supplement or replace other governmental programs and relieve other units of government from the full burden of these programs. It is appropriate, therefore, that a portion of the costs of these services be borne by

persons engaged in or benefiting from business activities on the Reservation, who thereby benefit from governmental services provided by the Tribe.

- (B) The Tribe makes contributions to Fire District No. 13 to defray a portion of the cost of fire protection and emergency medical services on the Reservation. Revenues are needed by the Tribe to fund such contributions.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

Subchapter I – Imposition and Collection of Tax

17-02.060 Imposition of Gross Receipts Tax.

There is imposed on and there shall be collected from each utility doing business within the Reservation a business privilege tax equal to three percent (3%) of the utility's gross receipts generated from retail sales within the Reservation.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.070 Timing of Sales.

For the purposes of this Chapter, a sale is deemed to have occurred at the time buyers are billed for the seller's actual or promised delivery of goods or services to the buyer.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.080 Payment of Taxes and Reporting.

All persons required to pay the tax imposed herein shall file with the Tribe's Finance Director, within thirty (30) days following the end of each calendar quarter, a statement of that person's retail sales made within the Reservation during that quarter. Such forms shall be filed following the end of each calendar quarter even if no taxes imposed under this Chapter are due. This statement shall be made on the proper form as made available by the Tribe and signed by the person responsible to conduct the utility's official business attesting to the accuracy of the statement. Full payment of any taxes due under this Chapter must accompany the statement and be received by the close of business of the last working day of the month following the end of the quarter for which the taxes were imposed.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.090 Taxpayer Records.

Upon notice from the Tribe's Finance Director, the taxpayer shall make available to the Finance Director, or the Director's designate, the taxpayer's books and records regarding the tax.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

Subchapter II – Enforcement and Appeals

17-02.100 Administration.

This Chapter shall be administered by or under the supervision of the Tribe's Finance Director.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.110 Interest on Late Payments.

If any sum payable under this Chapter is not paid to the Tribe by the date specified, there shall be added to the unpaid sum interest at the rate of eighteen percent (18%) per year.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.120 Penalties for Late Filing and Late Payment.

In addition to interest on late payments, as provided in Section 17-02.110, one or both of the following penalties shall apply:

- (A) If any return or statement is not filed by the due date specified in this Chapter, a penalty of five percent (5%) of the total tax due with the return or statement (exclusive of interest and other penalties) shall be added to the tax due.
- (B) If any payment is not made by the due date specified in this Chapter, a penalty of five percent (5%) of the total tax due with the return or statement (exclusive of interest and other penalties) shall be added to the tax due.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.130 Cost of Collection Actions.

In any action brought to enforce the provisions of this Chapter or to collect any sums due, including interest and penalties, the Tribe shall be entitled to its actual costs and reasonable attorney fees incurred in bringing the action. Any judgment entered shall bear interest at the rate of eighteen percent (18%) per year until paid.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.140 Appeals to Tribal Court.

The Swinomish Tribal Court shall have jurisdiction over any appeals relating to this Chapter and the tax imposed herein.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

Subchapter III – Repealer, Severability and Effective Date

17-02.150 Repealer.

This Chapter hereby repeals Ordinance 85-11-53, Ordinance 50 (reenacted through Ordinance 85-11-53), Appendix A to Ordinance 85-11-53, Ordinance 126, and Ordinance 128.

[History] Ord. 185 (9/30/03).

17-02.160 Severability.

The invalidity of any section, clause, sentence, or provision of this Chapter shall not affect the validity of part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 185 (9/30/03); Ord. 126 (8/6/98).

17-02.170 Effective Date.

The tax provided for in this Chapter became effective on January 1, 1999, as to all sales that are deemed, pursuant to Section 17-02.070, to have occurred on or after that date.

[History] Ord. 185 (9/30/03); Ord. 128 (11/10/98); Ord. 126 (8/6/98).